

Decision No. **80496****ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Marshal M. Mirza,
Inc. for Order Reinstating Dump
Truck Carrier Permit.

Application No. 53329
(Filed May 15, 1972)

Quentin L. Kopp, Attorney at Law, for applicant.
Harold Lane, for the Commission staff.

O P I N I O N

Marshal M. Mirza, Inc., requests a permit authorizing operations as a dump truck carrier pursuant to the provisions of Section 3612(b) of the Public Utilities Code.

A public hearing was held before Examiner Daly on June 30, 1972, at San Francisco at which time and place the matter was submitted.

The record indicates that applicant is primarily engaged as a grading contractor, but has performed operations as a dump truck carrier for approximately 20 years, either through its predecessor (Marshal M. Mirza as an individual) or as a corporation. Said operations were conducted pursuant to a radial highway common carrier permit and a city carrier permit duly issued by this Commission.

In 1969 the California Legislature amended the Public Utilities Code effective as of November 10, 1969, establishing a new class of carrier designated as a "dump truck carrier". Section 3612(b) of the Code contained a grandfather clause providing as follows:

"Any dump truck carrier engaged in business as such on the effective date of this section shall file with the Commission prior to March 16, 1970, an application for a permit to operate as a dump truck carrier; provided, that in lieu of all other fees required by law, the applicant shall pay

a fee of twenty-five dollars (\$25). The Commission shall issue such permit authorizing operation within the area requested in the application without further proceedings."

Applicant's president and sole stockholder testified that applicant never received any notice of the 1969 legislation or of the provision requiring the filing of an application for a "grandfather" dump truck carrier permit and that the first knowledge applicant had of such legislation was upon receipt of a Commission letter dated May 5, 1972, which informed applicant that its quarterly reports of gross operating revenue for 1971 showed revenue earned from dump truck transportation and that applicant did not hold a dump truck carrier permit. On May 8, 1972, applicant's president appeared at the Commission's License Section and indicated that applicant had been performing a limited amount of dump truck transportation and was unaware of the 1969 legislation.

The staff introduced Exhibit 6 which included, among other things, the following:

1. Copy of page 139 of the carrier list showing permitted carriers, including applicant, participating in MRT 7 prior to establishment of the dump truck carrier permit.
2. Copy of letter mailed to carriers on the above carrier list explaining their rights to "grandfather" dump truck carrier permits.
3. Application for "grandfather" dump truck carrier permit.
4. Copy of a radial highway common carrier permit issued to applicant as of October 7, 1971, restricting said permit against dump truck operations.

The staff witness testified that although he had no personal knowledge that the aforementioned documents were mailed to applicant the normal procedure is to send them as first class mail. He further testified that notice of the "grandfather" dump truck carrier permits was published in certain trade journals.

According to applicant's president, applicant's address in South San Francisco is on a rural mail delivery route and in 1969, there was considerable lack of delivery service which resulted in the failure to deliver certain mail to applicant and to other occupants of the area. He also testified that although applicant performed some dump truck operations in 1969, it was almost exclusively operating as a grading contractor and as a result was not in contact with other dump truck carriers at that time. He further testified that applicant was not and is not presently a subscriber to any of the trade journals.

At the present time applicant owns and operates four dump trucks which, when not in use by applicant, are rented to dump truck brokers.

After consideration the Commission finds that:

1. Applicant has operated as a dump truck carrier for many years pursuant to a radial highway common carrier permit and a city carrier permit.
2. The Commission's records indicate that notice of the 1969 legislation and applications for grandfather authority to operate as dump truck carriers were sent to the carriers participating in MRT 7 as of November 10, 1969, by first class mail and that applicant was included in said list.

Therefore, the Commission concludes that applicant had notice of the 1969 legislation and the procedure to be followed with respect to the acquisition of the requested permit. Having failed to file within the prescribed time the application must be denied. There is no statutory provision for granting grandfather authority retroactively.

O R D E R

IT IS ORDERED that Application No. 53329 is hereby denied.
The effective date of the authority shall be twenty days
after the date hereof.

Dated at San Francisco, California, this 19th day
of SEPTEMBER, 1972.

Vernon L. Sturgeon
President
William J. Symons Jr.
Philip J. ...
...
...
Commissioners

Commissioner Thomas Moran, being
necessarily absent, did not participate
in the disposition of this proceeding.